

1 DAVID R. ZARO (BAR NO. 124334)
RYAN T. WAGGONER (BAR NO. 251694)
2 ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
3 515 South Figueroa Street, Ninth Floor
Los Angeles, California 90071-3309
4 Phone: (213) 622-5555
Fax: (213) 620-8816
5 E-Mail: dzaro@allenmatkins.com
rwaggoner@allenmatkins.com

6 Attorneys for Defendant
7 ONEWEST BANK, FSB

8 UNITED STATES BANKRUPTCY COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 In re
DIANE J. BEALL

Bankruptcy Case No. 10-16454-LT13

Adversary Case No. 11-90028-LT

12
13 DIANE J. BEALL, an individual,

14 Plaintiff,

15 vs.

NOTICE OF MOTION AND MOTION
TO DISMISS ADVERSARY
COMPLAINT FOR FAILURE TO
STATE A CLAIM

Date: July 12, 2011

Time: 10:00 a.m.

Ctrm: 3

Judge: Hon. Laura S. Taylor

16 ONEWEST BANK, FSB, ITS ASSIGNS
AND/OR SUCCESSORS IN
17 INTEREST; and all such persons
claiming by, through, or under such
18 person, all persons unknown, claiming
any legal or equitable right, title, estate,
19 lien, or interest in the property described
in the complaint adverse to Plaintiff's
20 title thereto; and DOES 1-10, Inclusive,

Complaint Filed: January 22, 2011

21 Defendants.
22
23
24
25
26
27
28

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on July 12, 2011 at 10:00 a.m., in Courtroom 3 of the above-entitled Court located at 325 West F Street, San Diego, California, Defendant OneWest Bank, F.S.B. ("OneWest") will and hereby does move the Court for an order dismissing the Adversary Complaint of Plaintiff Diane J. Beall ("Beall"), pursuant to Federal Rule of Civil Procedure, Rule 12(b)(6), which is made applicable to bankruptcy proceedings pursuant to Federal Rule of Bankruptcy Procedure, Rule 7012, because Beall's Complaint fails to state a claim upon which relief can be granted.

First Claim for Relief

The First Claim for Relief, for "Declaratory Relief to Determine and Interest in Property," fails because it rests on Beall's erroneous Assertion that OneWest must "produce the note" in order to complete foreclosure proceedings.

Second Claim for Relief

The Second Claim for Relief, for "Declaratory Relief to Determine Status of OneWest's Objection and/or Claim and/or Motion for Relief of Stay," fails because it rests on Beall's erroneous Assertion that OneWest must "produce the note" in order to complete foreclosure proceedings.

Third Claim for Relief

The Third Claim for Relief, for Violation of 15 U.S.C. § 1641(g), fails because it is deficiently pled.

Fourth Claim for Relief

The Fourth Claim for Relief, for "Fraud in Conveyance," fails because it is deficiently pled.

Fifth Claim for Relief

The Fifth Claim for Relief, for Libel, fails because Beall cannot demonstrate that OneWest published false information about her.

1 **Sixth Claim for Relief**

2 The Sixth Claim for Relief, for Quiet Title, fails because Beall has not, and
3 cannot, tender back her debt.

4 **Seventh Claim for Relief**

5 The Seventh Claim for Relief, for Violation of Trust in Lending Act
6 ("TILA"), is time-barred.

7 This motion is based upon this Motion and Motion, the
8 Memorandum of Points and Authorities and Request for Judicial Notice submitted
9 herewith, and such additional evidence and arguments as may be presented at or
10 before the time of the hearing on this motion.

11
12 Dated: February 22, 2011

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
DAVID R. ZARO
RYAN T. WAGGONER

13
14
15 By: /s/ Ryan T. Waggoner
16 RYAN T. WAGGONER
17 Attorneys for Defendant
18 ONEWEST BANK, FSB
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) and not a party to this action. My business address is 515 South Figueroa Street, Ninth Floor, Los Angeles, California 90071-3309.

On February 22, 2011, I served the within document(s) described as:

**NOTICE OF MOTION AND MOTION TO DISMISS ADVERSARY
COMPLAINT FOR FAILURE TO STATE A CLAIM**

with the Clerk of the Court using the CM/ECF system which will send notification of such filing to:

Garry Harre, Esq.
Global Capital Law, PC
17612 Beach Boulevard, Suite 8
Huntington Beach, CA 92647-6873

Counsel for Plaintiff
T: 714.907.4182 – F: 714.907.4175
E: globalcapitallaw@gmail.com

David L. Skelton, Esq.
525 "B" Street, Suite 1430
San Diego, CA 92101-4432

Chapter 13 Trustee
T: 619.338.4010 – F: 619.239.5242
E: dskelton@covad.net

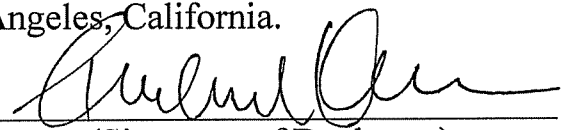
☐ **COURTESY COPY BY MAIL:** I placed a true copy of the document in a sealed envelope or package addressed as indicated above in Los Angeles, California for collection and mailing pursuant to the firm's ordinary business practice. I am familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **COURTESY COPY BY DIRECT E-MAIL:** I caused a true copy of the document to be sent to the person/s at the corresponding electronic address/es above from fkalve@allenmatkins.com. I am readily familiar with this firm's Microsoft Outlook electronic mail system and did not receive an electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury that I am employed in the office of a member of the bar of this Court at whose direction the service was made and that the foregoing is true and correct.

Executed on February 22, 2011, at Los Angeles, California.

Frederick Kalve
(Type or print name)


(Signature of Declarant)